

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK M. ROZENSKI,

Petitioner, 2:03-cv-1665-GEB-GGH-P

vs.

R.A. CASTRO, et al.,

Respondent. ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's June 5, 2006, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is "'debatable among jurists of reason,'" could be resolved differently by a different court, or is "'adequate to deserve encouragement to proceed further.'" Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant petition: 1) ineffective assistance of counsel; 2)
4 Brady violation; 3) insufficient evidence; 4) jury instruction error.

5 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
6 issued in the present action.

7 Dated: July 24, 2006

8 /s/ Garland E. Burrell, Jr.
9 GARLAND E. BURRELL, JR.
10 United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.